IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10029 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYENDRABHAI MAHAJAN

Versus

YUSUF SHABBIRBHAI MAKRANI C/O.I.H.GAGDANI,ADVOCATE

Appearance:

1. Special Civil Application No. 10029 of 2004

PS GOGIA for Petitioner No. 1

MR MANOJ SHRIMALI for Respondent No. 1

MS PAURAMI SHETH, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 02/02/2005

ORAL JUDGEMENT

Rule. Mr.Manoj Shrimali, Learned Advocate appearing for the respondent no.1 waives service of rule

and Ms.Paurami Sheth, Learned AGP waives service of rule for the respondent no.2. At the joint request of the Learned Advocates, the matter is taken up for final disposal.

2. Shri Jayendra Mahajan who is before this Court being aggrieved of the order dated 17.7.2003 passed by the Controlling Authority under the payment of Gratuity Act, 1972 in Gratuity Application No.59 of 2002, the order dated 15.7.2004 whereby the appeal being Gratuity Appeal No.31 of 2004 was dismissed and also the notice dated 22.6.2004 issued by the Collector, Jamnagar for recovery of the said amount.

3. The case of the petitioner before this Court is that he is not the owner of the `M/s.Niru Chikori Industries', that he could not avail of an opportunity for remaining present before the Controlling Authority under the Gratuity Act and defend the proceedings while the appeal was dismissed only on the ground of delay. Learned Advocate appearing for the petitioner submits that in the alternative it is also the case of the petitioner that the respondent workman is not his workman.

4. Mr.Manoj Shrimali, Learned Advocate appearing for the respondent workman submitted that this petition may not be entertained for the simple reason that the services of the respondent workman were terminated in the year 1996 and since then he is waiting for his legitimate dues including gratuity. He further submits that an application was filed to get the gratuity in the year 2002, which was allowed by order under challenge dtd. 17.7.2003, against which an appeal was filed which also came to be dismissed by order dated 15.7.2004. He submits that the petitioner came in action only after the notice was issued by the Collector on 22.6.2004.

5. Taking into consideration the rival submission, it is deemed fit by this Court that interest of justice will be served if an opportunity of hearing and presenting his case is granted to the petitioner and respondent workman is awarded costs to compensate him for his long waiting and expenses incurred to pursue, apply and defend the appeal. him. In that view of the matter, the petitioner is directed to pay an amount of Rs.5000/= by Demand Draft/Pay Order on or before 28.2.2005. The orders dated 17.7.2003, 15.7.2004 and notice dated 22.6.2004 are hereby quashed and set aside. The matter is remitted back to the Controlling Authority under the Payment of Gratuity Act for its decision afresh. At the

request of the Learned Advocate for the petitioner, liberty is reserved in favour of the petitioner to move necessary application before the Controlling Authority to defer its decision on the ground of pending proceedings. Rule is made absolute with no order as to costs. Payment of the cost awarded will be a condition precedent for approaching the Controlling Authority under the Gratuity Act.

(Ravi R Tripathi, J)
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